

Office of Personnel Management

§591.241

differential area or, in the case of local recruitment, on the effective date of the appointment.

(b) For an employee detailed to temporary duty in a post differential area and who is otherwise eligible for a post differential, agencies must begin paying a post differential after 42 consecutive calendar days of temporary duty in the post differential area.

§591.236 When do COLA and post differential payments end?

Subject to §591.237(a), agencies stop paying an employee a COLA or post differential on—

(a) Separation,

(b) The effective date of assignment or transfer to a new official duty station outside the COLA or post differential area, or

(c) In the case of an employee on detail to temporary duty in a post differential area, the ending date of the detail.

§591.237 Under what circumstances may employees on leave or travel receive a COLA and/or post differential?

(a) An employee on leave or travel may receive a COLA or post differential only if the agency anticipates that the employee will return to duty in the area. *Exceptions:* If the employee does not return to duty in the area, the agency may still pay a COLA and/or a post differential for the period of leave or travel, subject to paragraph (b) of this section, if the agency determines that—

(1) It is in the public interest not to return the employee to the duty station, or

(2) The employee will not return because of compelling personal reasons or circumstances over which the employee has no control.

(b) *Post differentials.* Agencies may pay a post differential to an employee only during the employee's first 42 consecutive calendar days of absence from the post differential area.

§591.238 How do agencies pay COLAs and post differentials?

(a) Agencies pay COLAs and post differentials as a percentage of an employee's hourly rate of basic pay, in-

cluding a retained rate of pay under 5 U.S.C. 3594(c) or 5363, for those hours during which the employee receives basic pay. This includes all periods of paid leave, detail, or travel status outside the COLA or post differential area.

(b) Agencies pay employees eligible for both a COLA and a post differential the full amount of the COLA, plus so much of the post differential as will not cause the combined total of the COLA and post differential to exceed 25 percent of the hourly rate of basic pay.

§591.239 How do agencies treat COLAs and post differentials for the purpose of overtime pay and other entitlements?

(a) Agencies include COLAs in the employee's straight time rate of pay and include COLAs and post differentials in an employee's regular rate of pay for computing overtime pay entitlements for nonexempt employees under the Fair Labor Standards Act of 1938, as amended.

(b) Agencies may not include a COLA or post differential as part of an employee's rate of basic pay for the purpose of computing entitlements to overtime pay, retirement, life insurance, or any other additional pay, COLA, or post differential under title 5, United States Code.

(c) Payment of a COLA or post differential is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

§591.240 How are agency and employee representatives involved in the administration of the COLA and post differential programs?

(a) OPM may establish a COLA Advisory Committee in each COLA survey area. The committees are composed of agency and employee representatives from the COLA survey area and one or more representatives from OPM.

(b) To the extent practical, the COLA Advisory Committees coordinate and work with the Survey Implementation Committee established pursuant to *Caraballo, et al. v. United States*, No. 1997-0027 (D.V.I.).

§591.241 What are the key activities of the COLA Advisory Committees?

(a) The COLA Advisory Committees may—